

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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ANTHONY FRAZIER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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09-CR-0349A

11-CV-1015A

**DECISION AND ORDER**

Petitioner Anthony Frazier has moved to withdraw the petition he filed pursuant to 28 U.S.C. §2255. For the reasons stated below, the motion is granted.

**DISCUSSION**

In 2010, Petitioner pled guilty to violating 21 U.S.C. § 846 and was sentenced to 210 months' imprisonment. See Docket 282. Petitioner then filed a timely motion to vacate or reduce his sentence pursuant to 28 U.S.C. § 2255. Several years later, and while his § 2255 petition was still pending, Petitioner filed a motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2) based on an amendment to the U.S. Sentencing Guidelines. While Petitioner's § 3582 motion was pending, Petitioner then notified the Court that "if . . . the Court grants . . . [Petitioner's] motion for sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) . . . Defendant's pending Section 2255 motion is moot." Docket 536 at 5.

The Court later granted Petitioner's § 3582(c)(2) motion, reducing his term of imprisonment from 210 months to 168 months. See Docket 538. In light of Petitioner's statement that granting his § 3582(c)(2) motion would "moot" his § 2255 petition, the Court then directed Petitioner to clarify whether he intended to withdraw his § 2255

petition. See Docket 539. Petitioner responded by stating that he “requests that this . . . Court formally withdraw his previously filed § 2255 motion due to the fact that the granting of [Petitioner’s] § 3582(c)(2) motion has made the aforementioned § 2255 motion moot.” Docket 540 at 2.

It is unclear whether granting Petitioner’s § 3582(c)(2) motion had the effect of mooted Petitioner’s § 2255 petition and his amended petition, which alleged, among other things, various forms of ineffective assistance of counsel that are unrelated to the basis for his § 3582(c)(2) motion. See Docket 337. The Court will, however, grant Petitioner’s motion to withdraw his § 2255 petition (Docket 337) and his amended petition (Docket 516), given that Petitioner states that granting his § 3582(c)(2) motion “has alleviated any need, at this time, to pursue any further form of relief by way of § 2255 or its accompanying proceedings.” Docket 540 at 3.

### **CONCLUSION**

Petitioner’s motion (Docket 540) to withdraw his § 2255 petition is granted. The Clerk of the Court shall take all steps necessary to close the petition’s accompanying civil action (11-CV-1015A).

**SO ORDERED.**

Dated: May 9, 2016  
Buffalo, New York

s/Richard J. Arcara  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE